

Conversely, claimant contends the Board lacks jurisdiction to hear this appeal and, therefore, the appeal should be dismissed. Claimant contends that neither respondent, its insurance carrier, nor the Kansas Insurance Guaranty Association notified either her or the Court of the liquidation order or stay prior to the October 24, 2000 preliminary hearing and, therefore, the Judge did not exceed his authority by issuing the preliminary hearing Order. Claimant also argues that the statute upon which respondent and its insurance carrier base their contentions provides that the Kansas Insurance Guaranty Association

is the proper party, as opposed to respondent and its insurance carrier, to request the preliminary hearing Order to be set aside.

The only issues before the Board on this appeal are:

1. Does the Board have jurisdiction to review the stay issue for the first time on appeal?
2. If so, is the Order void due to the alleged liquidation order?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds:

1. This appeal should be dismissed.
2. The issue of the insurance carrier's liquidation and the stay of proceedings has not been raised before the Judge. The Board's jurisdiction and review is limited to those questions of law and fact presented to the administrative law judges. The Workers Compensation Act provides:

The review by the board shall be upon questions of law and fact as presented and shown by a transcript of the evidence and the proceedings as presented, had and introduced before the administrative law judge.¹

3. Because the liquidation issue was not before the Judge, the Board cannot and should not review the stay issue on this appeal.
4. The basis of respondent and its insurance carrier's argument is that the Judge violated the automatic stay created by K.S.A. 40-2916, which provides:

All proceedings in which the insolvent insurer is a party in any court in this state shall be stayed for sixty (60) days from the date the insolvency is determined to permit proper defense by the association of all pending causes of action. As to any covered claims arising from a judgment under any decision, verdict or finding based on the default of the insolvent insurer or its failure to defend an insured, the association either on its own behalf or on behalf of such insured may apply to have such judgment, order, decision, verdict or finding set aside by the same court or administrator that made

¹ K.S.A. 1999 Supp. 44-555c(a).

such judgment, order, decision, verdict or finding and shall be permitted to defend against such claim on the merits.²

5. The parties should present their evidence and legal arguments to the Judge to determine whether K.S.A. 40-2916 is applicable to this claim and, if so, its effect upon the October 26, 2000 Order.

WHEREFORE, the Board dismisses this appeal, leaving the October 26, 2000 preliminary hearing Order entered by Judge Avery in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of January 2001.

BOARD MEMBER

c: Timothy A. Short, Pittsburg, KS
Kip A. Kubin, Overland Park, KS
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director

² K.S.A. 40-2916.